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No. 548

In the Supreme Court of the United States

October Term, 1952

HARRY RENTON BRIDGES, HENRY SCHMIDT AND J. R. ROBERTSON, *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition For a Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO PETITIONERS' PETITION FOR ENLARGEMENT OF SCOPE OF REVIEW ON CERTIORARI

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Petitioners' application for enlargement of the scope of review on certiorari presents, as to Question 3 of the petition for a writ of certiorari, no new matter not already presented in the petition and answered in the Government's memorandum in reply thereto (pp. 26-35).

The only aspect of Question 3 to which petitioners specifically advert in their present application is the exclusion from evidence of this Court's opinion in *Bridges* v. *Wixon*, 326 U.S. 135. Petitioners now say that that point is related to the question of *res judicata* presented by Question 1 in the petition for a writ of certiorari. But that question is one of law, the solution of which does not call for submission of the opinion to the jury as part of the evidence in the case. Exclusion of the opinion as evidence, of course, does not prevent the courts from taking it into consideration in determining its effect as a prior adjudication, as the court below did. R. 838-7. It is to be observed that the offer as evidence for the jury was not based upon the theory of *res judicata* but for its bearing upon the witness' state of mind. R. 526-7, 4226-7, 4248-9.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General

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